

## **§ 40.105**

### **§ 40.105 Inability to provide an adequate amount of breath or saliva.**

(a) If an employee is unable to provide sufficient breath to complete a test on a non-evidential breath testing device, the procedures of § 40.69 apply.

(b) If an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device), the STT, as provided in § 40.101 of this part, shall conduct a new test using a new device. If the employee refuses to complete the new test, the STT shall terminate testing and immediately inform the employer. This constitutes a refusal to test.

(c) If the new test is completed, but there is an insufficient amount of saliva to activate the device, STT shall immediately inform the employer, which shall immediately cause an alcohol test to be administered to the employee using an EBT.

### **§ 40.107 Invalid tests.**

An alcohol test using a non-evidential screening device shall be invalid under the following circumstances:

(a) With respect to a test conducted on a saliva device—

## **49 CFR Subtitle A (10–1–99 Edition)**

(1) The result is read before two minutes or after 15 minutes from the time the swab is inserted into the device;

(2) The device does not activate;

(3) The device is used for a test after the expiration date printed on its package; or

(4) The STT fails to note in the remarks section of the form that the screening test was conducted using a saliva device;

(b) With respect to a test conducted on any non-evidential alcohol testing device, the STT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording on the form of the test result.

### **§ 40.109 Availability and disclosure of alcohol testing information about individual employees.**

The provisions of § 40.81 apply to records of non-evidential alcohol screening tests.

### **§ 40.111 Maintenance and disclosure of records concerning non-evidential testing devices and STTs.**

Records concerning STTs and non-evidential testing devices shall be maintained and disclosed following the same requirements applicable to BATs and EBTs under § 40.81 of this part.